

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO: 1:23-CR-29

TERRANCE WAYNE VANOCHTEN,

Defendant.

* * * *

SENTENCING HEARING

* * * *

BEFORE: THE HONORABLE PAUL L. MALONEY
United States District Judge
Kalamazoo, Michigan
September 29, 2023

APPEARANCES:

APPEARING ON BEHALF OF THE PLAINTIFF:

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APPEARING ON BEHALF OF THE DEFENDANT:

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I N D E X

WITNESS

Page

SARA CHOI

Direct Examination by Mr. Kessler

14

Cross Examination by Mr. Tilton

28

E X H I B I T S

Rec'd.

Government's Exhibit 1
(Video recording)Government's Exhibit Number 2
(Photo)Government's Exhibit Number 3
(Photo)Government's Exhibit Number 4
(Photo)Government's Exhibit Number 5
(Photo)Government's Exhibit Number 6
(Photo)Government's Exhibit Number 7
(Video recording)Government's Exhibit Number 8
(Video recording)

1 Kalamazoo, Michigan

2 September 29, 2023

3 at approximately 2:39 p.m.

4 PROCEEDINGS

02:39:29 5 THE COURT: This is File Number 23-29; The United
6 States of America vs. Terrance Wayne VanOchten. This matter
7 is before the Court for sentencing.

8 The Court's file reflects that on June 20, 2023,
9 the defendant pled guilty before this Judge to the offense
02:39:58 10 of possession of unregistered destructive devices, contrary
11 to 26 U.S. Code 5861(d), 5841, and 5871. The Court accepts
12 the plea agreement in this case finding the charges pled to
13 adequately reflect the seriousness of the actual offense
14 behavior.

02:40:19 15 There are defense objections to the scoring of the
16 guidelines by the Court's probation office. The Court's
17 probation office scored this case at Offense Level 23,
18 Criminal History Category I, resulting in an advisory
19 guideline range of 46 to 57 months.

02:40:36 20 The record should reflect that Assistant United
21 States Attorney Nils Kessler represents the government,
22 Attorney Sean Tilton and Pedro Celis represent the
23 defendant, the defendant is present in person.

24 Mr. Tilton, have you had ample opportunity, sir, of
02:40:53 25 reviewing the presentence report with your client?

1 MR. TILTON: Yes, your Honor.

2 THE COURT: Is it true that you have no objections
3 to the report?

4 MR. TILTON: Correct, your Honor.

02:41:00 5 THE COURT: Do you concur --

6 MR. TILTON: Well, the scoring -- We object to the
7 scoring, but no factual objections.

8 THE COURT: All right. Thank you. Subject to your
9 objections, do you concur the advisory guideline range is 46
02:41:10 10 to 57 months?

11 MR. TILTON: Yes, your Honor.

12 THE COURT: Thank you.

13 Mr. VanOchten, you've had ample opportunity of
14 reviewing the presentence report with your lawyers?

02:41:19 15 THE DEFENDANT: Yes, sir.

16 THE COURT: And are you satisfied with their work
17 and representation of you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Thank you.

02:41:24 20 Mr. Kessler, do you concur in the advisory
21 guideline range?

22 MR. KESSLER: I do, your Honor.

23 THE COURT: Are you moving third level, if I grant
24 acceptance?

02:41:36 25 MR. KESSLER: If you grant acceptance, yes.

1 THE COURT: I recognize your pleadings indicate
2 that the government's position is the defendant should not
3 get acceptance, but if I grant acceptance, you're moving
4 third level?

02:41:48 5 MR. KESSLER: Yes, your Honor, because we don't
6 have any objection to the timing of the plea.

7 THE COURT: All right. Thank you very much.
8 All right. Let's deal with the objections.

9 The Court notes the government's sentencing
02:42:00 10 memorandum, which is ECF 41; the defendant's sentencing
11 memorandum, which is ECF 39; a supplement, which is ECF 40;
12 and the Court has received many letters in this case as
13 well. So with that introduction, Mr. Tilton.

14 MR. TILTON: Thank you, your Honor.

02:42:20 15 Your Honor, Mr. Celis is going to handle argument
16 for the objections to Paragraphs 30 and 31. As noted in the
17 defendant's sentencing memorandum, we had originally
18 objected to Paragraph 32 of the presentence report, but that
19 objection was withdrawn.

02:42:37 20 THE COURT: All right. Thank you.

21 Mr. Celis, you may proceed, sir.

22 MR. CELIS: Good afternoon.

23 We will stand mostly on our sentencing memo on this
24 issue, but I just wanted to respond to a few things in the
02:42:51 25 government's sentencing memorandum.

1 The government notes that Daniels is not
2 controlling caselaw in this circuit, and said that, you
3 know, on the contrary district courts in this and other
4 circuits have routinely upheld 922(g)(3). However, the
02:43:09 5 government only cites one district court case for that
6 proposition, and that case is from the Northern District of
7 Indiana. And the government -- Which is in the Seventh
8 Circuit, not the Sixth Circuit. And the government notes
9 that that case cites other cases, but if you go through that
02:43:27 10 case, it mostly relies on a prior decision from the same
11 judge. I did not find any Sixth Circuit cases there. And
12 if you go to that prior decision, Posey, I likewise did not
13 find any Sixth Circuit cases there. It's Seventh Circuit
14 cases and then two cases from the Fifth Circuit, one of
02:43:45 15 which is Daniels, which has now been overruled by the Fifth
16 Circuit en banc, it cited the district court decision in
17 Daniels.

18 During my brief search this morning, I found only
19 one case that from -- one district court case from the Sixth
02:44:05 20 Circuit that addresses 922(g)(3) after Bruen. And that is
21 an opinion that was actually released on this Monday,
22 September 25th. This case is United States vs. Ketonio
23 Lewis, which is Westlaw 2023, 6225329.

24 THE COURT: Which district, I'm sorry?

02:44:32 25 MR. CELIS: That's from the Middle District of

1 Tennessee.

2 THE COURT: Okay. Go ahead, sir.

3 MR. CELIS: And in that opinion, the district court
4 rejected a facial challenge to 922(g)(3). However, the
02:44:46 5 Court said that it saw potential merit in an as applied
6 challenge. It noted that the defendant in this case was
7 purportedly a periodic user of marijuana, so it left open an
8 as applied challenge to be determined after trial so that
9 all of the facts about the defendant's drug use could come
02:45:04 10 in.

11 So from my review of the district court cases in
12 the Sixth Circuit, there is no overwhelming rejection of
13 this argument. In fact, the one case I found left open the
14 possibility for an as applied challenge for a marijuana
02:45:22 15 user.

16 That was the main addition to our brief that I
17 wanted put forward. But if the Court has any questions
18 about our position, I'm happy to answer them.

19 THE COURT: Let me hear from Mr. Kessler, and I'll
02:45:42 20 undoubtedly come back to you.

21 Go ahead, Mr. Kessler.

22 MR. KESSLER: Yes, your Honor.

23 Just addressing the one thing that my colleague
24 just brought up, your Honor, he makes a point that the
02:45:51 25 government cites only one district court case in support of

1 922(g)(3). I would point out we don't have to present any
2 cases in support of it. 922(g)(3) is the law of the land
3 and has been everywhere in America since 1968, so it's
4 really their burden to come up with some compelling caselaw
02:46:09 5 that would make you change your mind on that. The only case
6 that's out there that's controlling anywhere is Daniels,
7 which is in the Fifth Circuit, not the Sixth Circuit, as we
8 pointed out. As far as I'm aware, the only district courts
9 that have actually followed that precedent are in the Fifth
02:46:25 10 Circuit, one of which was a court that ruled that 922(g)(3)
11 was constitutional and then had to go change its mind
12 reluctantly because of Daniels. We are not in the Fifth
13 Circuit here.

14 I don't know if you want to hear my whole argument
02:46:37 15 on this now, your Honor. I do have some evidence that goes
16 to other issues having to do with our sentencing memorandum,
17 but also to do with this, in the sense that Daniels is
18 distinguishable from this case. And basically what I would
19 be intending to show the Court is that Daniels had
02:46:56 20 potentially an as applied challenge, because he was a
21 periodic user of marijuana and was sober at the time,
22 whereas Mr. VanOchten is very different from that. We
23 actually have video evidence and there's audio and there is
24 discussion about -- and I would like the Court to see it,
02:47:10 25 what he was doing. He actually was high and drunk at the

1 time he was using a gun in a very unsafe way, which is going
2 to become eminently apparent to the Court when I show the
3 video.

4 Would you like me to put on evidence now or would
02:47:23 5 you like me to do the argument or --

6 THE COURT: Why don't you go ahead and complete the
7 argument, and then we will view the video and listen to the
8 audio.

9 MR. KESSLER: Okay, your Honor.

02:47:33 10 So, I already started by talking about the fact
11 that Daniels is not controlling caselaw here. But even if
12 it were controlling caselaw, I would argue to the Court that
13 Daniels was incorrectly decided. What the Bruen case said,
14 which is what Daniels purports to interpret, is that a gun
02:47:52 15 regulation has to be consistent with the nation's history
16 and traditions of firearms regulation in order to be upheld.
17 But what the Court actually said in Bruen as well is that we
18 don't have to go back and find an exact match. So we don't
19 have to go back and find something that is, for example, a
02:48:08 20 colonial era law that says people can't be smoking hemp
21 while possessing flint locks, which would be an exact match
22 in order to uphold (g)(3). What we need to find, Bruen
23 says, is an analog, so something that is close enough to
24 pass constitutional muster.

02:48:24 25 The Daniels case is wrong because they had this

1 very narrow reading where they were essentially saying that
2 if there's a societal problem going back all the way to the
3 18th century, then you would need to find a very close
4 match. Okay. But we don't have a societal problem like
02:48:41 5 this going way back to the 18th century. There was no
6 epidemic of people running around using hemp and engaged in
7 mass shootings with flint locks or whatever back then. What
8 you had was just what they were dealing with back then, and
9 what we are dealing with now, which is completely different.
02:48:57 10 It is an unprecedented societal issue, the control of guns,
11 and what drugs can do to people now in terms of the
12 rationality of their thinking, which called for although
13 more leeway, and Bruen gives the courts more leeway and
14 gives Congress more leeway in order to regulate new issues,
02:49:17 15 things that didn't exist in exactly the form back in the
16 18th century. That's what we have now, and that's what we
17 have with Mr. VanOchten, somebody who is very dangerous
18 because of the combination of modern weaponry that wasn't
19 available back then, and drugs that are, even if they were
02:49:32 20 in some sense available back then, in the sense of hemp or
21 whatever he was bringing up, they weren't being used in the
22 same way, and in conjunction with mental illness,
23 prescription drugs and everything else. So we don't have to
24 find an exact match. We have to find an analog. And what
02:49:49 25 Bruen gives Congress the leeway to do is to take a look at

1 it and say, would it be consistent with the nation's history
2 and tradition to disarm dangerous people. That's -- We
3 should broaden it out that much. And I think that's what
4 the Supreme Court is probably going to come down saying
02:50:05 5 after they review -- finish reviewing the Rahimi case, which
6 I'm sure the Court is aware of. It's another 922(g) case
7 that has been briefed and is going before the Supreme Court
8 for oral argument in November.

9 We have to have enough leeway and Congress has to
02:50:20 10 have enough leeway to be able to deal with this modern
11 problem. So I don't think Daniels is correctly decided.
12 But even if it were correctly decided, and this would be the
13 third prong of our argument, Daniels is distinguishable from
14 this case. So Daniels, and I'm not sure the name of this
02:50:34 15 case that my colleague just brought up here, but what they
16 have in common is that those are as applied challenges to
17 the situation of one unique individual. And I pointed this
18 out in my brief, but I think Daniels in particular is
19 inapposite to our case here. They overstate it a little bit
02:50:51 20 by saying that Daniels had found that 922(g)(3) is not
21 applicable to marijuana users. That's not what it said.
22 The case said it was inapplicable as applied to Daniels,
23 because Daniels was this periodic marijuana user, who was
24 sober at the time he possessed the firearms in question.
02:51:10 25 That is not what we had in this case. As the Court will see

1 when I put on the evidence, we have a defendant here who was
2 drunk and high at the time that he was shooting in the
3 direction of a propane tank in a residential neighborhood
4 with an AR-15 that he had modified with a binary trigger
02:51:28 5 making it almost a machine gun. That is the essence of
6 dangerousness that the founding fathers would have been
7 okay, and I think everybody from then until now would be
8 okay with giving Congress the power to regulate. That is
9 essentially taking guns away from dangerous people.

02:51:46 10 So that's our argument as to that particular issue.
11 I don't know if you want me to go on or --

12 THE COURT: All right. Well, why don't we play the
13 evidentiary material that you wish me to view, and then we
14 will take it from there.

02:51:59 15 MR. KESSLER: Okay. I can do it one of two ways.
16 If we don't have any contest to it, I can just show the
17 videos. It's a video that's five minutes long that's a
18 compilation that is Mr. VanOchten, so it's kind of self
19 authenticating as are two shorter audio clips and some
02:52:16 20 photographs. And I can narrate it or I can call the agent
21 to narrate it.

22 THE COURT: What is your preference?

23 MR. TILTON: Well, I guess this is the first time
24 I'm hearing it's a compilation. So it's not the actual
02:52:29 25 video that was provided during discovery?

1 MR. KESSLER: No, no, no. Well, let me clarify.
2 Maybe I should just do it through the agent. But it's an
3 hour long, and I just took parts of it, rather than show
4 long stretches of nothing pertinent to this hearing.

02:52:45 5 It's -- You've seen the entire thing, to answer
6 your question.

7 MR. TILTON: I haven't seen it in this form, so
8 that's my only concern, is that I could've watched the five
9 minute compilation ahead of time and had a position on it,
02:53:01 10 now I don't know what it is.

11 THE COURT: Well, let's do it this way. Let's take
12 what the government wishes to show, and Mr. Tilton, if you
13 have an objection regarding the fact that it's not -- Rule
14 of Completeness, I guess would be the best way to describe
02:53:17 15 it. If you believe that more of the video needs to be
16 shown, then we may have to take a five yard penalty for
17 delay of game and come back on another day.

18 MR. TILTON: Thank you, your Honor.

19 THE COURT: Okay.

02:53:34 20 MR. KESSLER: The government calls Special Agent
21 Sara Choi of the ATF.

22 THE COURT: Agent, please step forward and be
23 sworn.

24 SARA CHOI,
02:53:41 25 was thereupon called as a witness herein, and after having

1 been first duly sworn to tell the truth, the whole truth and
2 nothing but the truth, was examined and testified as
3 follows:

4 COURT CLERK: State your full name and spell your
02:53:54 5 last name for record, please.

6 THE WITNESS: Sara Choi, S-a-r-a, C-h-o-i.

7 DIRECT EXAMINATION

8 BY MR. KESSLER:

9 Q. Good afternoon, Agent Choi.

02:54:06 10 A. Good afternoon.

11 Q. And if I can ask you to tell us a little bit about your
12 background. How long have you been an agent with ATF?

13 A. I've been with the ATF since March of 2020. Prior to
14 that, I was a law enforcement officer for about 13 years.

02:54:17 15 Q. Okay. And you are stationed here in the Grand Rapids
16 resident agency?

17 A. Yes, I am.

18 Q. Are you the one who, on the federal side at least,
19 investigated the case involving Mr. VanOchten?

02:54:27 20 A. Yes, I did.

21 Q. I would like to take you back to August of 2002 (sic.
22 2022). How did you first get involved in this case?

23 MR. TILTON: Not 2002, but 2022.

24 THE WITNESS: Kalkaska County Sheriff's Office
02:54:37 25 contacted me, and alerted me that they had found pipe bombs

1 at Mr. VanOchten's residence.

2 BY MR. KESSLER:

3 Q. And that would fall within the purview of the ATF?

4

02:54:48

5 A. It would.

6 Q. So let's go back specifically to August 17, 2022. Why
7 were deputies dispatched there in the first place?

8 A. They had a report of a subject firing a firearm in an
9 unsafe manner.

02:55:02

10 Q. Okay. And the sheriff's deputies who went out to Mr.
11 VanOchten's residence, were they wearing body-worn cameras?

12 A. Yes, they were.

13 Q. Have you actually watched the entire video from that
14 encounter?

02:55:12

15 A. Yes, I have.

16 Q. It's well over an hour long; is that correct?

17 A. It is.

18 Q. Have you watched the shorter five minute compilation
19 that I put together for this hearing?

02:55:21

20 A. I have, yep.

21 Q. Was it altered in any way, other than it being edited
22 down just for length?

23 A. That's correct, yes.

24 Q. Okay. Correct that it has not been altered --

02:55:31

25 A. Yes.

1 Q. -- in any other way?

2 MR. KESSLER: Okay. I would like to go ahead and
3 play it then, your Honor.

4 THE COURT: All right, thank you. Go ahead.

02:55:39 5 MR. KESSLER: For the record, this would be
6 Government Exhibit 1.

7 (Playing Government's Exhibit Number 1.)

8 BY MR. KESSLER:

9 Q. Did he just say what he was shooting at? Were you able
02:56:58 10 to hear that?

11 A. He said crows.

12 (Continued playing Government's Exhibit Number 1.)

13 BY MR. KESSLER:

14 Q. And what did he just say about don't hit what?

02:57:09 15 A. The propane tank.

16 (Continued playing Government's Exhibit Number 1.)

17 BY MR. KESSLER:

18 Q. Agent Choi, we just saw a pistol there with an extended
19 magazine. Did you recognize that?

03:00:41 20 A. Yes, I did.

21 Q. What was Mr. VanOchten doing with that gun when the
22 sheriff deputies arrived?

23 A. He had it in his hand.

24 Q. Is that the one we heard him earlier -- the deputies
03:00:49 25 earlier telling him to please put that gun down twice?

1 A. Yes, it is.

2 (Continued playing Government's Exhibit Number 1.)

3 BY MR. KESSLER:

4 Q. I just want to make sure the Court can hear that.

03:01:29 5 Were you able to hear that, Agent Choi?

6 A. Yes.

7 Q. What did she say?

8 First off, who was that?

9 A. I'm sorry?

03:01:34 10 Q. Who was that?

11 A. That was his -- well, now ex-wife, Sandra.

12 Q. And what did she say?

13 A. She said that he drinks and then he smokes pot and does
14 it at the same time.

03:01:43 15 Q. Shooting the gun?

16 A. Correct.

17 (Continued playing Government's Exhibit Number 1.)

18 BY MR. KESSLER:

19 Q. All right. Now Agent Choi, we just heard the deputy
03:02:17 20 say -- They entered a room that appeared to be filled with
21 military gear and weapons, correct?

22 A. Correct.

23 Q. And he said we need to call Ashley and get an SW.

24 I'm sorry.

03:02:30 25 What would an SW be?

1 A. A search warrant.

2 Q. Did the deputies actually go and get a search warrant
3 that day?

4 A. They did.

03:02:36 5 Q. So, let's take a closer look at what we saw in that
6 room. And I'm going to bring up Government Exhibit 2. Have
7 you seen this before?

8 A. I have.

9 Q. Is that a photograph of the room that they entered?

03:02:48 10 A. Yes, it is.

11 Q. What are we looking at here?

12 A. There is a large amount of firearms, ammunition,
13 military gear.

14 Q. So this one, for example, this one -- at least these
03:03:02 15 two are AR-15 platform semiautomatic rifles, correct?

16 A. Correct.

17 Q. This is a semiautomatic tactical shotgun?

18 A. It is.

19 Q. I want to focus on this here. There is a patch on here
03:03:16 20 it has name tapes that say "U.S. Army" and "VanOchten" on
21 one of the rifles?

22 A. That is correct.

23 Q. Were you able to check and find out whether Mr.
24 VanOchten ever actually served in the military?

03:03:26 25 A. He did not.

1 Q. Now, one of the guns have something particular modified
2 on it, correct?

3 A. Correct.

4 Q. Can you tell us about that.

03:03:38 5 A. One of the rifles had a binary trigger assembly.
6 That's something that's aftermarket installed, which Mr.
7 VanOchten said that he had done himself. The binary trigger
8 is a trigger system that fires when you pull the trigger and
9 again when you release it.

03:03:58 10 Q. So it fires twice as fast as a normal AR-15?

11 A. Correct.

12 Q. Okay. Is the rate of fire from something like that
13 comparable to a machine gun?

14 A. It could be comparable, correct.

03:04:06 15 Q. One other thing, Mr. VanOchten has argued in his
16 sentencing memorandum, that the reason for all of this is
17 that his hobby is that he is a collector of military relics
18 and curios?

19 A. Uh-huh.

03:04:19 20 Q. Are any of these things actual military firearms?

21 A. Not to my knowledge, no.

22 Q. Are they all aftermarket -- bought on the commercial
23 market or modified?

24 A. Correct.

03:04:27 25 Q. Now, let's focus on the bomb itself, because we had

1 some discussion on another topic here about what he was
2 using the bombs for. So I'm going to bring up Government
3 Exhibit 3. Do you recognize this ammunition can?

4 A. I do.

03:04:45 5 Q. What do we see in the can?

6 A. I see hobby fuse, I see metal pipe sections, threaded
7 end caps, and a black powder cannister.

8 Q. Okay. Let me ask you about a couple of those things.
9 First off, the hobby fuse. What would that be used for?

03:05:01 10 A. To initiate a device.

11 Q. Okay. And that was found in there with the bomb?

12 A. Yes.

13 Q. There were three bombs, correct?

14 A. There were three.

03:05:10 15 Q. And the powder, Mr. VanOchten is making an argument
16 about the age of the powder having something to do with what
17 he wanted to use it for. As an ATF agent, can you tell us
18 if there's anything about the age of powder we should know?

19 A. The black powder is known to be very stable, shelf
03:05:29 20 stable. I mean it can still act as it's designed for
21 several, several years.

22 Q. Okay. So you could have that black powder for a long
23 time and still explode things with it years later?

24 A. Yes.

03:05:41 25 Q. Let me bring up the next exhibit, Number 4. What are

1 we looking at here? Is this an evidence bag around it?

2 A. Yes, it is.

3 Q. Is that the same device or one of the three devices
4 that was found in that box?

03:05:55 5 A. Yes, it is, and it's been rendered safe, so it wasn't
6 -- How you're seeing it now is not how it was found in the
7 house.

8 Q. Okay. What function does the metal piping and the
9 metal end caps serve in making an explosive device like
03:06:09 10 this?

11 A. It confines the powder and allows it to explode. Black
12 powder is a low explosive, so it wouldn't detonate on its
13 own. It needs to be confined in order to do that.

14 Q. When the device actually explodes, what does the metal
03:06:24 15 turn into?

16 A. Shrapnel.

17 Q. In an improvised explosive device, what is the purpose
18 of shrapnel?

19 A. Anti personnel, to kill or maim.

03:06:34 20 Q. Let's take a look at Exhibit 5. We saw some hobby fuse
21 in the box. Mr. VanOchten said that box was there for 20
22 years or something like that.

23 What do we see in the middle of this photograph in
24 a different bag, this?

03:06:51 25 A. Additional hobby fuse.

1 Q. That's not the same hobby fuse that was in the box,
2 correct?

3 A. No.

4 Q. Did ATF find it in this form?

03:07:00 5 A. Yes.

6 Q. What is tannerite?

7 A. Tannerite is an exploding target. It's a brand.

8 Tannerite itself is a brand of exploding target a binary
9 explosive. It has a fuel and oxidizer, typically it's

03:07:16 10 imodium nitrate as the oxidizer, and aluminum powder as the
11 fuel. They are stable when separate, but the idea of the
12 binary explosive is that when those two are mixed, they
13 become an explosive.

14 Q. In your experience as an ATF agent, have you come
03:07:30 15 across tannerite in connection with black powder in
16 improvised explosive devices?

17 A. I have heard of it, yes.

18 Q. What is the purpose of putting those things together?

19 A. Just to boost the power, I suppose, or the sensitivity.

03:07:44 20 Q. And tannerite, was that also not found in the same box
21 with the three pipe bombs?

22 A. Say that again, I'm sorry.

23 Q. Was the tannerite also found separate from the box
24 containing the three pipe bombs?

03:07:56 25 A. Found separate from?

1 Q. Right. It wasn't in the box with the pipe bomb?

2 A. Oh, no.

3 Q. Let's bring up Exhibit 6.

4 Did you find some books and literature in the same
03:08:09 5 room with the pipe bombs?

6 A. I did.

7 Q. So this one says, "Booby traps: Department of the Army
8 Field Manual," so that one was in there?

9 A. It was.

03:08:19 10 Q. Go to the next page, what does this one say?

11 A. "Gorilla Warfare" and "Special Forces Operations."

12 Q. And this page. What is this one called?

13 A. "Militia Battle Manual."

14 Q. Did you leaf through these?

03:08:33 15 A. I did.

16 Q. And I'm going to show one or two pages from this
17 Militia Battle Manual. Were there parts of it that were
18 highlighted?

19 A. There was.

03:08:41 20 Q. This one that's highlighted says, "aluminum bronzing
21 powder" has a mark next to the header. What is the header
22 there of that chapter?

23 A. Fertilizer and aluminum explosives.

24 Q. What are fertilizer and aluminum explosives used for?

03:08:57 25 Are you familiar with anything like that?

1 A. It would be similar to imodium nitrate and aluminum
2 powder.

3 Q. What was used to take down the Edward Murrah Federal
4 Building in Oklahoma City?

03:09:09 5 A. Aluminum powder and imodium nitrate.

6 Q. And then we see more highlighting here under something
7 called "expedient blasting caps." Are blasting caps used in
8 improvised explosive devices as well?

9 A. We can -- improvised blasting caps, yes.

03:09:26 10 Q. This last page says "fuses," and it has a picture of
11 somebody using det cord with explosives. What is det cord?

12 A. That's used to detonate a device that has a high
13 explosive contained in it.

14 Q. These are also used in anti-personnel devices?

03:09:40 15 A. They are.

16 Q. So the defendant was arrested at the scene this day,
17 correct?

18 A. He was.

19 Q. And was he taken to the Kalkaska County Sheriff's
03:09:50 20 Office?

21 A. Yes, he was.

22 Q. And who is Detective Regan Foerster?

23 A. He's a detective with Kalkaska County Sheriff's Office.

24 Q. Did he question the defendant after Miranda advisement?

03:10:00 25 A. Yes, he did.

1 Q. Was that recorded?

2 A. It was.

3 Q. Okay. Have you listened to that whole recording?

4 A. I have.

03:10:05 5 Q. All right. And I've already transcribed it in our
6 sentencing memo here, but there is a brief section of it
7 that deals with Mr. VanOchten's explanation for why he had
8 the devices. Have you listened to that excerpt?

9 A. Yes, I have.

03:10:18 10 Q. Has it been changed in any way, other than being
11 excerpted from that long interview?

12 A. No, it hasn't.

13 MR. KESSLER: I would like to play that, your
14 Honor.

03:10:25 15 THE COURT: Proceed.

16 MR. KESSLER: Exhibit 7.

17 (Playing Government's Exhibit Number Exhibit 7.)

18 MR. KESSLER: That's the end of that.

19 BY MR. KESSLER:

03:12:18 20 Q. Just one question on that, too. We heard him saying
21 they were kept safe?

22 A. Uh-huh.

23 Q. Is an anti-personnel device like that safe if you put
24 it in an ammo can?

03:12:29 25 A. Absolutely not.

1 Q. Have you interviewed the defendant's ex-wife, Sandra
2 VanOchten?

3 A. Yes.

4 Q. And are you aware whether she recorded him on her phone
03:12:39 5 on occasion?

6 A. She did.

7 Q. And were some of those recordings turned over to you?

8 A. Yes, they were.

9 Q. Have you listened to those?

03:12:46 10 A. Yes, I have.

11 MR. KESSLER: I would like to play Government
12 Exhibit 8. This just goes to 3553 factors.

13 (Playing Government's Exhibit Number 8.)

14 BY MR. KESSLER:

03:13:50 15 Q. I just want to make sure it's clear what he said at the
16 end there. What did he say about what God needs?

17 A. God needs warriors.

18 Q. Now, are you also aware that Mrs. VanOchten had taken
19 out personal protection orders against the defendant in

03:14:06 20 Kalkaska County?

21 A. Yes.

22 Q. And it's in the record that he went back there anyway,
23 correct?

24 A. That is correct.

03:14:12 25 Q. Was arrested, there were two occasions?

1 A. Yes.

2 Q. And on one of those occasions, did Ms. VanOchten video
3 record what he did when he went into the house?

4 A. Yes, she did.

03:14:22 5 Q. Have you seen that video?

6 A. I have.

7 MR. KESSLER: I would like to play that, your
8 Honor, and that will be the end.

9 THE COURT: Okay.

03:14:32 10 MR. KESSLER: I have to play this on a slightly
11 different thing because it won't work on this.

12 (Playing video exhibit.)

13 BY MR. KESSLER:

14 Q. And this was at Mrs. VanOchten's house after he had
03:15:17 15 been given a protection order saying he couldn't go to that
16 house; is that correct?

17 A. That is correct.

18 MR. KESSLER: That's all I have, your Honor.

19 THE COURT: Counsel, you may inquire.

03:15:31 20 MR. TILTON: Do you have copies of the pictures for
21 me?

22 MR. KESSLER: Sure. And I can pull them up too, if
23 you want.

24 Your Honor, would you like me to give you hard
03:15:53 25 copies of the photos as well? I just gave copies to Mr.

1 Tilton.

2 THE COURT: That would be fine. Thank you.

3 CROSS EXAMINATION

4 BY MR. TILTON:

03:16:00 5 Q. Good afternoon, Agent Choi.

6 A. Good afternoon.

7 Q. Are the video compilation that was Exhibit 1, you've
8 previously viewed that?

9 A. Yes, I have.

03:16:08 10 Q. When did you do that?

11 A. Today.

12 Q. When did you first become involved in this case?

13 A. I was called on the day that deputies encountered Mr.
14 VanOchten, first encountered him, when they found the pipe
03:16:36 15 bombs, I believe that was August 17th.

16 Q. Of, 2022?

17 A. Yes, sir.

18 Q. And the second search happened in August of 2022, as
19 well?

03:16:47 20 A. It did.

21 Q. And we heard a recording of -- just the audio recording
22 of the interview with Mr. VanOchten?

23 A. Yes.

24 Q. And that was in August of 2022?

03:16:57 25 A. It was.

1 Q. That was in August -- on August 18th of 2022?

2 A. That sounds correct.

3 Q. And that was the first time that Mr. VanOchten was
4 confronted about the pipe bombs?

03:17:09 5 A. That is correct.

6 Q. And he was asked about them sort of generally, right?

7 A. Sure, yes.

8 Q. And the officer who was inquiring didn't know how the
9 pipe bombs were found?

03:17:24 10 Let me rephrase that question?

11 A. Sure.

12 Q. Mr. VanOchten volunteered that the pipe bombs were in
13 an ammo can, correct?

14 A. He did in the interview, yes. I'm not sure if there
03:17:39 15 was a conversation between deputies and the detective prior
16 to, I'm not sure.

17 Q. What I'm concerned about is the conversation with Mr.
18 VanOchten.

19 A. Okay.

03:17:48 20 Q. And Mr. VanOchten volunteered that the pipe bombs were
21 in the ammo can?

22 A. Yes.

23 Q. And the deputy said that he wasn't sure where they
24 were?

03:17:56 25 A. Okay. Yes.

1 Q. And Mr. VanOchten said that he constructed the pipe
2 bombs to blow up fish years ago; is that correct?

3 A. Yes.

4 Q. And between Mr. VanOchten and the deputy, they
03:18:15 5 estimated that was around 2010?

6 A. Yes.

7 Q. Did you ever investigate the age of the black powder?

8 A. I did not.

9 Q. Did you ever look at the defendant's sentencing

03:18:29 10 memorandum where we reached out to the manufacturer of the
11 black powder?

12 A. I did not.

13 Q. Did you ever attempt to contact the manufacturer of the
14 black powder?

03:18:37 15 A. No, I -- At the time, I didn't see the relevance.

16 Black powder, like I said earlier, is very stable, and you
17 can make a new bomb out of old black powder.

18 Q. That black powder could have been in that cannister
19 since 2010?

03:18:52 20 A. Could have been, sure.

21 Q. An ammunition cannister is a dry place typically if
22 it's closed correctly?

23 A. Correct.

24 Q. Now, exhibits -- these are all the -- I'm going to ask
03:19:09 25 you about all of the photographs.

1 A. Sure.

2 Q. Looks like it's Exhibits 2, 3, 4, 5, 6, all of these
3 photographs, approximately when were they taken?

4 A. It would have been in the -- Well, can you show me
03:19:29 5 some of the photographs?

6 Q. Sure.

7 A. Just so I can --

8 MR. TILTON: May I approach, your Honor?

9 THE COURT: Yes.

03:19:36 10 THE WITNESS: These ones should all be the ones
11 from either the first search warrant or the second search
12 warrant, which would have been August 17th, 18th, 19th
13 range.

14 BY MR. TILTON:

03:19:48 15 Q. Of 2022?

16 A. Yes, sir.

17 Q. And all of the interviews -- the videos that we saw
18 today, those were all from -- some were from August, 2022,
19 right?

03:19:59 20 A. Correct.

21 Q. Some were from November of 2022?

22 A. Some of them, yes.

23 Q. Okay. But you had them all by the time that Mr.
24 VanOchten was indicted in this case, correct?

03:20:11 25 A. I believe so, yes.

1 Q. And you had provided those to Mr. Kessler?

2 A. Yes.

3 Q. And you had all of that evidence in June of this year
4 when Mr. VanOchten pled guilty?

03:20:22 5 A. Yes.

6 Q. You were aware that his -- that what he said about when
7 the pipe bombs and the purpose of the pipe bombs for the
8 creation was to blow up fish, correct?

9 A. Yes.

03:20:53 10 Q. And you discussed that with Mr. Kessler?

11 A. Which part?

12 Q. About -- Strike that.

13 MR. TILTON: I don't have any additional questions,
14 your Honor.

03:21:02 15 THE COURT: All right. Thank you.

16 Any redirect, Mr. Kessler?

17 MR. KESSLER: No, your Honor.

18 THE COURT: All right. Thank you.

19 You may step down, Agent.

03:21:07 20 THE WITNESS: Thank you.

21 (At 3:21 p.m., witness excused.)

22 THE COURT: Mr. Kessler, had you completed your
23 argument at this point in time, on the Bruen related issue?

24 MR. KESSLER: On the Bruen related issue, yes, your
03:21:24 25 Honor.

1 THE COURT: All right. Thank you.

2 Mr. Celis, go ahead, sir, if you have anything
3 further on that issue.

4 MR. CELIS: Just a few additional points responding
03:21:39 5 to the government's arguments.

6 The government says that 922(g) is the law of the
7 land. Well, the Constitution is the supreme law of the
8 land, and Bruen tells us that when there is a Constitutional
9 challenge under the Second Amendment, it's the government's
03:21:54 10 burden to prove the history and tradition.

11 I would like to note that in this -- I would like
12 to note that the Daniels case did, in fact, apply the lower
13 standard from Bruen. We noted in our brief that arguably it
14 could have required that distinctly similar regulation based
03:22:15 15 on the fact that hemp has been around since the founding,
16 but Daniels went ahead and applied the lower standards of
17 scrutiny, and they were just looking for a relevantly
18 similar historical analog.

19 The government's argument that essentially the
03:22:36 20 Second Amendment allows regulation of dangerous people does
21 not comply with Bruen. Bruen gave us a very specific test
22 where we have to look at how and why regulations apply. For
23 the reasons in our argument, just saying it can regulate
24 dangerous people, is not enough. We pointed out that the
03:23:06 25 way so-called dangerous people were regulated was different.

1 There is a difference between saying you can't fire weapons
2 while you're intoxicated, and saying you cannot possess
3 weapons at all if you're a habitual user, even if you're
4 sober at the time.

03:23:28 5 The dangerous people standard that the government
6 is proposing, that is essentially a return to the scrutiny
7 that was applied before Bruen where we are looking at
8 whether a regulation makes sense essentially. Bruen changed
9 that analysis and told us how important it is to look at the
03:23:51 10 historic tradition.

11 I would also like to point out that marijuana usage
12 in this case and in Daniels are virtually identical. In
13 Daniels, the defendant said that he used marijuana
14 approximately 14 days a month. Mr. VanOchten said that he
03:24:12 15 used marijuana approximately three days a week, which is a
16 slightly lower rate than 14 days a month.

17 THE COURT: What do you make of your client's
18 status at the time that the officers were there in terms of
19 his consumption of alcohol and how that impacts the analysis
03:24:37 20 here?

21 MR. CELIS: I don't believe the consumption of
22 alcohol makes a difference, your Honor. He is not being,
23 you know, if this were an enhancement for using or
24 possessing a weapon while intoxicated, that would be
03:24:51 25 relevant. But the question is, is he prohibited person

1 under federal law based on the fact that he uses marijuana?
2 So the fact that he was drunk at the time, I don't believe
3 is relevant.

4 And I would like to point out that the PSR notes
03:25:08 5 that a blood sample was drawn from Mr. VanOchten pursuant to
6 a warrant, and the laboratory tests revealed his blood
7 alcohol level, but it did not find any marijuana, any THC.
8 I don't know if it was tested for that, but there is no
9 result indicating any THC in his blood at the time.

03:25:28 10 THE COURT: Refresh my memory, what did the test
11 come back on his BAL?

12 MR. KESSLER: 187, your Honor.

13 MR. CELIS: I have .578, which is Paragraph 21 of
14 the PSR. Sorry, .157, yes.

03:25:49 15 THE COURT: A .5 would be fatal.

16 MR. CELIS: Yes.

17 THE COURT: I think.

18 Okay. So under the OUIL statute in the State of
19 Michigan, that's nearly, for purposes of a label, almost
03:26:07 20 double drunk.

21 MR. CELIS: Yes, your Honor.

22 But like I said, I don't believe it's relevant.
23 The test isn't, you know, do we look at generally whether he
24 is a dangerous person, and then if he is, it doesn't matter,
03:26:21 25 you know, what the particular statute is. We are asking, is

1 he a prohibited person? Is he the equivalent of a felon in
2 possession. And that is strictly based on his usage of
3 marijuana. And under the statute, being intoxicated under
4 controlled substance doesn't make you a prohibited person.
03:26:42 5 You have to be a habitual user or an addict in order to be a
6 prohibited person.

7 THE COURT: What impact of the case presently set
8 for argument before the Supreme Court, what impact, if any,
9 would that decision have on this case?

03:27:02 10 MR. CELIS: It's hard to say, your Honor. It could
11 impact it, it could not impact it. It would really depend
12 on -- I mean, one, the result of the case, you know,
13 affirmed or reversal, but two, the grounds that the Court
14 used to reach its decision. It's based on a different
03:27:23 15 statute, so I could see it having an impact. I could see it
16 not having an impact.

17 THE COURT: Well, presumably it would further --
18 further explain the analysis of Bruen as it relates to yet
19 another provision of 922, correct?

03:27:44 20 MR. TILTON: Yes, it would certainly be another
21 example of the historical analysis that the Court conducts.
22 It may shed some light on who are members of the people
23 under the Second Amendment.

24 THE COURT: All right. Thank you.

03:28:00 25 What is the status of Daniels now in the circuit?

1 MR. CELIS: I believe -- I'm not sure. I'll defer
2 to the government.

3 MR. KESSLER: Where it's at right now -- Can you
4 hear me, your Honor?

03:28:11 5 THE COURT: Yes.

6 MR. KESSLER: So, Daniels right now, the Fifth
7 Circuit ruled that 922(g)(3) was unconstitutional as to
8 Daniels, and the U.S. Attorney's Office there had asked for
9 some additional time to go to the solicitor general and see
03:28:30 10 whether or not they wanted to ask for a rehearing. That
11 deadline has passed, so I think at this point they would be
12 deciding whether or not to file for cert in the Supreme
13 Court. I don't know whether they are going to.

14 THE COURT: So, Daniels stands as adjudicated,
03:28:47 15 subject to the government's decision by the solicitor
16 general, whether a cert petition will be filed?

17 MR. KESSLER: Correct. They are not going to file
18 for rehearing, they have decided not to do that. So it's
19 just whether or not they will file for cert in the Supreme
03:29:01 20 Court.

21 THE COURT: Do we have any idea what the time line
22 on that is?

23 MR. KESSLER: I do not, your Honor. I think it
24 might be 60 days, but I couldn't tell you off the top of my
03:29:10 25 head.

1 THE COURT: All right. Thank you.

2 Mr. Celis, anything further?

3 MR. CELIS: No, your Honor.

4 THE COURT: Go ahead, Mr. Tilton.

03:29:17 5 MR. TILTON: Your Honor, I believe the government's
6 evidence, at least related to acceptance of responsibility
7 -- do you want to hear on that or want to hear on that or do
8 ou want to hear that as part of allocution?

9 MR. KESSLER: Can I just briefly --

03:29:31 10 THE COURT: Yes. I think acceptance is a subject
11 matter of allocution at the time.

12 So, Mr. Kessler, go ahead if you have anything
13 further on the Bruen issue.

14 MR. KESSLER: Just very briefly, your Honor.

03:29:45 15 This one is different because he was drunk and high
16 at the same time. We heard his wife up there weeping about
17 how he always does this. He is always drunk and high at the
18 same time. And I was looking for it, I know I cited the
19 exact paragraph in my sentencing memorandum, but it's an
03:30:03 20 uncontested fact in the PSR that the police also found a
21 warm bowl of marijuana sitting out there on that same table
22 when they went. So he was using marijuana. He has admitted
23 it. He was using marijuana and alcohol at the same time.
24 So, it's not just the fact that he was drunk, he was high at
03:30:20 25 the time that he possessed the bombs that he was charged

1 with, and that he was shooting out the back. And I think
2 what we just saw in the video illustrates pretty clearly why
3 this is a dangerous person, the type that the founding
4 fathers would have countenance taking weapons away from;
03:30:37 5 somebody who has a problem with alcohol, has a problem with
6 drugs, uses them together in a dangerous way, with dangerous
7 weapons. So not only shooting at -- we got to see the
8 propane tank -- shooting in the direction of a propane tank
9 in a residential neighborhood, with a weapon that he had
03:30:53 10 modified to be almost a machine gun, so that's just on that
11 one day, but he also possessed the weapons on other days
12 later when he was under a personal protection order not to
13 go to the house, and we saw what he did, which is go to the
14 house, dress up like a soldier, with an AR-15 again, clearly
03:31:10 15 drunk. So what we are seeing is not the Daniels style
16 occasional user of marijuana who is sober at the time, we
17 are seeing somebody who has an ongoing problem with
18 marijuana, who keeps making bad errors in judgment that put
19 the public in danger.

03:31:31 20 THE COURT: So if I appreciate your position
21 vis-a-vis Daniels, you think Daniels is not properly
22 decided, even though the offender in that case was sober?

23 MR. KESSLER: Yes, I think it's not -- Correct.
24 Those are two different things.

03:31:48 25 First off, Daniels is not correctly decided,

1 even though the person was sober there, because I think they
2 had too tight of a reading of how close the prior regulation
3 had to be that you find in history and tradition. That, I
4 think, is the first part. And then the second part is, this
03:32:05 5 is a different case. As applied to Mr. VanOchten, he is
6 dangerous on an ongoing basis because of his irresponsible
7 use of marijuana in conjunction with alcohol and high
8 powered weapons.

9 THE COURT: All right.

03:32:19 10 MR. KESSLER: The last thing I would say is, you
11 asked my colleague here about the impact of Rihimi,
12 Michigan. I don't think it's going to resolve (g) (3) all by
13 itself, because it's a different issue. A large part of
14 Rihimi is going to go to whether the nation has a history
03:32:37 15 and tradition of disarming people who are involved in
16 domestic violence, which is a completely different subject.
17 But I think what they will have in common is addressing this
18 same issue that's like issue number one that we've been
19 talking about here, which is how much leeway does Congress
03:32:51 20 have under the history and tradition of this country in
21 order to put into place regulations that protect the public.
22 And I think they are appropriate in this case and shouldn't
23 be messed with.

24 THE COURT: All right. Thank you.

03:33:04 25 Well, to say that interpretation of the Bruen case

1 is having a major impact on litigation in many of the
2 subsections of Section 922, the government takes the
3 position that Daniels was wrongly decided, and it is not
4 binding on this Court, because it's an out-of-circuit
03:33:38 5 opinion.

6 There are no Sixth Circuit cases presently
7 available for the Court to consider on this particular
8 subsection of 922, and indeed, I don't think there is any
9 Sixth Circuit case post Bruen that would be helpful for the
03:33:59 10 Court to consider as binding precedent to resolve this
11 particular issue.

12 The bottom line here is the Court is -- the Court
13 is going to agree with the government that the scoring of
14 the guidelines under the facts and circumstances of this
03:34:25 15 case are appropriate for the reasons stated in the
16 government's papers.

17 The condition of the defendant at the time of the
18 arrest, that being, apparently intoxicated with a blood
19 alcohol level of .15, and as Mr. Kessler appropriately
03:34:56 20 points out, also having consumed marijuana with a warm bowl
21 of marijuana in close proximity to where he fired shots
22 towards a propane tank which, of course, if it had been
23 penetrated by the ammunition fired from the gun, would have
24 caused a major explosion.

03:35:24 25 So, the Court accepts the government's argument

1 that this statute as presently written is within the history
2 and tradition as described in the Bruen case. That this is
3 a statute written by the Congress which has been in effect
4 for a very significant period of time. And in the Court's
03:35:49 5 judgment, does pass muster under the Bruen decision as
6 outlined in the government's -- in the government's papers
7 before the Court today.

8 I recognize this is an issue which will ultimately
9 be decided by the appellate courts of this circuit, as well
03:36:16 10 as ultimately the United States Supreme Court. The next
11 chance the Court has in explaining the contours of the Bruen
12 decision will occur in this term of the Supreme Court with
13 an argument in a case in the fall. We will get more
14 guidance at this point, but based on the status of the
03:36:39 15 caselaw now, the Court finds that the government has met its
16 burden here to show that the statute is valid post Bruen.

17 The Court would also note the Overholser case,
18 O-v-e-r-h-o-l-s-e-r, at 2023 Lexis 108630, a Northern
19 District of Indiana case, obviously in the Seventh Circuit,
03:37:11 20 but a district court case out of the Northern District of
21 Indiana, as further support for the Court's ruling.

22 So with that, the objection of the defendant as to
23 Paragraphs 30 and 31 are overruled.

24 The objection to Paragraph 32 has been withdrawn,
03:37:41 25 and accordingly, the adjusted offense level for this case is

1 26, the -- and the Court will resolve the issue of
2 acceptance of responsibility during allocution and, of
3 course, that would affect the guideline calculation in this
4 case. If acceptance is granted, the guideline range is 46
03:38:13 5 to 57 months. If it is not, the guideline range becomes 63
6 to 78.

7 So with that, any further objections from the
8 defendant regarding the guidelines?

9 MR. TILTON: One moment, please, your Honor.

03:38:33 10 THE COURT: Sure.

11 (Pause in proceedings.)

12 MR. TILTON: No additional objections, your Honor.

13 THE COURT: All right. Thank you.

14 Mr. Kessler, allocution on behalf of the
03:38:56 15 government.

16 MR. KESSLER: Yes, your Honor.

17 So that brings us, I think, to the acceptance of
18 responsibility issue, your Honor, and I think we have the
19 evidence we need now. That's why I wanted to play the
03:39:10 20 audio, although I had transcribed it for the sentencing
21 memo, you can hear it when he is first interviewed about the
22 bombs, you can hear it in his voice, that he is making it up
23 as he is going along. He professes to have all of this
24 certainty now, after he has talked to a lawyer and after he
03:39:28 25 has had time to think of something for the Court, he has a

1 very specific story, which is, I couldn't get the salmon to
2 bite -- and I'm going to pronounce this wrong -- but the Au
3 Gres River, and that's why I made these explosives.

4 First off, that makes no sense. There's no reason
03:39:44 5 why you would need to make metal bombs that can fragment and
6 throw shrapnel in order to get fish. We hear stories all
7 the time about kids throwing M80s in the water to watch what
8 happens or whatever, you don't need to make a pipe bottom
9 for that.

03:39:58 10 But when you go back and hear what he actually said
11 when he was first was confronted about it, he didn't have a
12 chance to think of something. So you could hear him making
13 it up as he goes along. I'm not going to play it again. If
14 the Court would like to hear it. But you can almost hear
03:40:11 15 the gears turning in his head as he's saying, I can't
16 remember, I can't remember what it was. Oh, yeah, I think
17 that maybe this buddy of mine and I, we went out to go blow
18 up some ditches and watch the water fly, and we were fishing
19 for carp. Everything about it is different, too, than the
03:40:27 20 statement he makes now. He says ditches and he says carp,
21 and the whole reason was just to watch the water fly.

22 Whereas now it's salmon in the Au Gres River, because they
23 weren't biting. It's a different story. And I think if we
24 had a trial, I mean you've seen many many times where
03:40:43 25 whatever lawyer it is who is on the other side of a story

1 like this, is always going to point out that memory doesn't
2 get better and sharper with time. Suddenly now he remembers
3 everything with total clarity in a way that benefits him,
4 but at the time, he had this very unlikely sounding
03:41:00 5 scenario.

6 Now, there is other inconsistencies as well. We
7 hear this whole thing about how, I believe he said in his
8 sentencing memo that he had gotten rid of the bomb or
9 forgotten about it 20 years ago or something like that. But
03:41:12 10 in the audio, he talks about it being 12 years ago. All of
11 that -- the timing doesn't matter all that much. And I
12 think the defendant wants to make a big deal about this by
13 saying well, that powder hasn't been manufactured for a long
14 time, as if that proves what his intent was.

03:41:28 15 First off, we heard the testimony of an ATF agent
16 who would know about this, that bomb -- gunpowder is stable,
17 and can be used for a long time. And the fact that maybe he
18 had a can of gun powder from a long time ago doesn't mean he
19 didn't make the bomb recently. It also means -- doesn't
03:41:45 20 mean he didn't make the bomb back then with the intent to
21 hurt people. We are getting off on a sidetrack there. The
22 issue isn't when he made the bomb. The issue is what he
23 intended to do with it, and that's why I actually asked the
24 Court to consider whether there is actual acceptance of
03:42:00 25 responsibility here. Because what he is trying to do is

1 paint a picture of himself as this harmless guy, and it's
2 wrong on every front. He says, "I was just making the bombs
3 for fishing, so you don't have to worry." And it's the same
4 thing you saw him saying to the police officers when they
03:42:18 5 went to his house, "Oh, yeah, it's all good." He said it
6 three or four times at the door, "Don't worry about it.
7 It's all good. It's all good. Oh, no, no, nothing to see
8 here." That's what he is trying to say to the Court here
9 is, don't worry about it. This was just for fish, nothing
03:42:29 10 to see here. You know that's not true. We all know that's
11 not true from the evidence that we have seen here. This was
12 surrounded by manuals on how to hurt other people. The
13 Militia Battle Manual that he had underlined with things
14 about how to use the same kinds of bombs that terrorists
03:42:47 15 like McVeigh used to blow up the federal building. That's
16 what he is interested in. It's not fishing books that are
17 around here. We saw nothing about fishing, and we've heard
18 no evidence from anybody or anything that would back him up,
19 other than his self serving statement that he only made the
03:43:03 20 bombs for fish.

21 When you look at the whole picture, it is obvious
22 what he wanted to make these bombs for. It's the same
23 reason he had a sniper rifle and a binary trigger AR-15, and
24 all these fake uniforms and a helmet and everything. And
03:43:19 25 it's the same thing we heard him say in his own recorded

1 voice which is, "I want to go to war for these men who got
2 wrapped up in January 6. I want Nancy Pelosi's head on a
3 stake." That's why he wanted the bombs. And I think when
4 he comes in here and says that the whole reason I had all
03:43:32 5 this stuff was because I have a hobby of collecting military
6 collectibles, and because I was interested in fishing with
7 them a long time ago. The Court should be offended and look
8 at that and say he is lying to us about why he was doing
9 this. Why he was doing it was dangerous, your Honor.

03:43:54 10 Do you want me to address statutory sentencing
11 factors at this point?

12 THE COURT: Go ahead.

13 MR. KESSLER: Okay. So this is actually brief.

14 I think the two that really jump out to me are,
03:44:02 15 first, protection of the public. We have people like this,
16 too many of them right now, who get geeked up on
17 misinformation, they get angry about things beyond all
18 reason, which is what you heard here. And I think
19 deterrence. That people who are consuming the same media
03:44:19 20 and the same information and being made angry, are always
21 tempted to do this sort of thing. And every time we have
22 somebody who actually gets the punishment that the
23 guidelines set out for this, I think it sends a strong
24 deterrent message that it won't be tolerated. Because this
03:44:35 25 is the kind of thing that could really hurt other people.

1 Even if he didn't intend to, this man had anti-personnel
2 bombs in a tin box in his house. He could have blown up his
3 whole house. He could have blown up half the neighborhood
4 shooting a propane tank. This is the kind of dangerous
03:44:52 5 behavior that really can't be tolerated because, and it
6 needs to be deterred because it is bad for the protection of
7 the safety of the public.

8 Now, looking at the PSR, the recommendation from
9 probation is actually for a slight downward variance from
03:45:06 10 the guideline range, and I have the greatest respect for
11 probation, but I have to disagree with them on this one. I
12 can't see any good reason why he should get a pass or get
13 lenient treatment in this case, especially when he is coming
14 in here and lying to the Court about what he intended to do
03:45:22 15 with these bombs. We shouldn't send a message that somebody
16 of his demographic is going to get a pass, because I been
17 doing this, as Mr. Tilton has, for over 20 years. I can't
18 even count the number of young men who are 19, 20 years old,
19 who have one small felony for something, and they have one
03:45:41 20 pistol that they didn't shoot somebody with, and they get a
21 much longer sentence than probation is recommending. And he
22 had bombs, not a pistol, and he had an armory full of
23 AR-15s, including one that was made into almost a machine
24 gun. And unlike most of those people, he actually said what
03:45:58 25 he intended to do with it. He wants to go to war. I think

1 all of that is important in this case.

2 Now, you saw it with the way the Kalkaska County
3 Sheriff's Office treated him. They treated him with great
4 respect and kid gloves. I don't want to say it's because of
03:46:15 5 his demographic, but they, you know, they treated him very
6 very professionally, and people all over the country don't
7 always get treated that way. I don't think we should make
8 that same assumption that he is harmless just because he
9 presents in a certain way.

03:46:28 10 If you read the letter that he sent to the Court,
11 and you see the video the way he talks to law enforcement,
12 he always tries to butter everybody up, and he plays up that
13 image that I'm this harmless, middle class, middle aged
14 white guy that you don't have to worry about. And he says
03:46:44 15 things like, "I love law enforcement. I love the flag. I
16 love our military troops." Which has nothing to do with
17 anything. The only reason he puts that in the letter is to
18 try to say to this Court somehow, we are all on the same
19 team, but you know what is actually in his mind, because --
03:46:58 20 and that's why I played those snippets from the initial
21 encounter, three, four times he says, "I'm not the threat
22 here. I'm not the enemy" with the emphasis on I. In other
23 words, we are on the same team. I love you guys. You and
24 me, we are on the same team. But what he is saying is there
03:47:15 25 is an enemy. When he says, "I am not the enemy," he is

1 saying there is an enemy, and it's one of us, other
2 Americans with whom he doesn't agree, like Nancy Pelosi,
3 whose head needs to be on a stick, or Chuck Schumer or
4 whatever. Whatever his political motivations are, he wants
03:47:35 5 to hurt other Americans. This whole idea of a peaceful
6 Terry is a fiction. He brings in these letters that say
7 that he is a man of faith, and that he regularly attends the
8 Catholic church, and he can be counted on. And that's
9 again, that's buttering up the Court with this idea that I'm
03:47:50 10 one of you, I share your religion, you don't have to worry
11 about me. The real Terry VanOchten, we heard it in his own
12 words, and we saw it in his actions. He violates a personal
13 protection order in order to stalk his ex-wife. Can you
14 imagine how frightening that would be, to be his ex-wife,
03:48:08 15 who we saw weeping up there, because he is constantly
16 getting drunk and stoned and doing this crazy thing with the
17 guns. She's weeping from fear, has to get a personal
18 protection order from the county court, and goes home one
19 day and finds him in the house, dressed in full combat gear,
03:48:25 20 drunk, with a gun, with the helmet on, in her house, and
21 then does it again. And he acknowledges that he's got a
22 personal protection order, he knows that, and they have to
23 take him out of the house under arrest. That's the real
24 Terry VanOchten. He lies to the Court about why he has the
03:48:42 25 guns. He lies to the Court about why he has the bombs. All

1 of that.

2 In the end, I don't think we can take his word for
3 it when he says, "It's all good." Because I think that is
4 the same thing he said to those officers is what he is
03:48:56 5 trying to tell the Court here. It's all good. It's all
6 good. And it's not, your Honor. And that's why I think a
7 guideline sentence is appropriate in this case.

8 THE COURT: Thank you, counsel.

9 Mr. Tilton.

03:49:08 10 MR. TILTON: Thank you, your Honor.

11 Your Honor, I think the government and I agree that
12 on this acceptance of responsibility issue we have gotten
13 sidetracked. I think ultimately the Court has discretion.
14 The issues that the government has raised about whether Mr.
03:49:41 15 VanOchten is truthful or not about whether it was carp or
16 salmon, I don't think that these are material issues.

17 The guideline says that the entry of a guilty plea,
18 this is Note 3 to 3E1.1, "Prior to commencement of trial
19 combined with truthfully admitting the conduct comprising
03:49:57 20 the offense of conviction and truthfully admitting or not
21 falsely denying any additional relevant conduct for which is
22 accountable under 1B1.3 will constitute significant evidence
23 of acceptance of responsibility for the purpose of
24 Subsection A." I think he has admitted the offense from the
03:50:14 25 start. What I heard when he had that interview with the

1 deputy in Kalkaska was the deputy asked him about the pipe
2 bombs, and he said, yes, I have them, and he told the deputy
3 about them, that they were in ammo cans. I think he has
4 accepted responsibility. He has told the officers about
03:50:31 5 making those pipe bombs from the start. And there isn't an
6 issue here of denying relevant conduct that he would be
7 accountable for under 1B1.3.

8 Additionally, Agent Choi testified today, testified
9 about the government's investigation, about her
03:50:48 10 investigation, and about all of those exhibits that we saw
11 today that were turned over to the government prior to Mr.
12 VanOchten's Indictment. I think it's important to go back
13 to the plea agreement in Paragraph 9, and this is ECF 32,
14 Page I.D. 161, the plea which was taken in this Court, and
03:51:10 15 there is an acceptance of responsibility statement. It says
16 that the U.S. Attorney's Office agrees not to oppose the
17 defendant's request for a two level reduction of his offense
18 level for acceptance of responsibility under Section
19 3E1.1(a) of the sentencing guidelines.

03:51:26 20 The defendant reserves the right to object to the
21 defendant's request if it subsequently learns of conduct by
22 him that is inconsistent with the criteria set forth in the
23 commentary of Section 3E1.1.

24 By the time that Mr. VanOchten came in here and
03:51:41 25 pled guilty, he had already revoked -- his bond had been

1 revoked at our request, and the government was aware of all
2 of the conduct which is alleged here today, which should be
3 held against him in determining acceptance of
4 responsibility.

03:51:55 5 The last paragraph of the plea agreement is the
6 typical paragraphs that says it's the complete agreement,
7 and so the government didn't put anything in there about
8 statements. They knew his position prior to the plea, about
9 why he constructed those bombs, and the only thing, I guess,
03:52:14 10 that changed that we have heard about today is whether it
11 was for carp or salmon and whether it was a ditch or a
12 specific river.

13 I think Mr. VanOchten, and he is going to address
14 the Court here in a minute, has met the requirement for
03:52:30 15 acceptance of responsibility, and I think his statement
16 today should be taken into consideration as well. He has
17 always admitted that he built those bombs. He has never
18 denied that from the first time that he was confronted about
19 that.

03:52:44 20 Additionally, I think when the Court is looking at
21 what sentence is appropriate here, I agree with the
22 probation department that a sentence below the advisory
23 guideline range is appropriate. And I'm not asking for any
24 special treatment for Mr. VanOchten. What I'm asking is
03:53:03 25 that the Court look at his prior history. He is 57 years

1 old. He is in Criminal History Category I. He has a long
2 history of working. He has a long family history. He has
3 had a very difficult year where he's admittedly made some
4 poor decisions, but I think looking over the span of the 57
03:53:26 5 years that he has been alive, those decisions have been
6 confined to the last year, and I think that they have been a
7 result of alcohol use and mental health issues. It's a very
8 rare thing that a defendant willingly wants his attorney to
9 file a revocation -- a motion for revocation of bond when
03:53:48 10 he's never spent any significant period of time in jail, and
11 I think --

12 THE COURT: That was going to happen anyway, wasn't
13 it, based on the record? Can you imagine a magistrate judge
14 of this court not revoking bond based on the record that Mr.
03:54:02 15 VanOchten had rolled up while he was on bond?

16 MR. TILTON: Well, what I would add is we did have
17 some bond revocation hearings, and at that point, the
18 magistrate judge had not revoked his bond. I think that Mr.
19 VanOchten --

03:54:16 20 THE COURT: Put it this way. Can you imagine that
21 I wouldn't have revoked his bond under the circumstances?

22 MR. TILTON: It's very possible, your Honor. But I
23 do think it's significant that he was the one -- that we are
24 the ones that came to the government, to the Court and said,
03:54:32 25 he needs to be in custody for his own benefit at that point.

1 And I think he has had time now, he has been in custody
2 since May, and he's had time to evaluate what got him here,
3 why he is here, why he is coming in front of you today in
4 custody versus off of the street, and the changes that he
03:54:52 5 needs to make in his life to get back to the family that
6 supports him. He has a number of family members who are
7 here today; his girlfriend, his mother, and his sister. Mr.
8 VanOchten's going to apologize to them for his behavior.
9 And he is also going to -- while his ex-wife and his
03:55:10 10 ex-stepdaughter are not here today, he is also going to
11 apologize to them, because while they may not be -- Let me
12 put it this way: He realizes that his own actions have had
13 consequences on himself and had consequences on the people
14 around him. And I think when the Court looks at the 3553(a)
03:55:33 15 factors, I think that his history and characteristics, I
16 think that these would point towards a sentence below the
17 advisory range. I think he has been specifically deterred.
18 And I think the Court can create a sentence that is below
19 the range that addresses the remaining purposes of
03:55:53 20 sentencing.

21 Thank you.

22 THE COURT: Mr. Tilton, as far as recommendations
23 to the Bureau of Prisons, sir, go ahead.

24 MR. TILTON: Your Honor, we would specifically ask
03:56:02 25 for mental health treatment and evaluation, substance abuse

1 treatment, and -- well, evaluation and treatment, any
2 vocational training that's available, and placement as close
3 to --

4 THE COURT: Close to home?

03:56:21 5 MR. TILTON: Yes, your Honor.

6 THE COURT: Is he going to be eligible for RDAP
7 given the count of conviction here?

8 MR. TILTON: I don't believe that he would be
9 eligible for the reduction. I think it is always beneficial
03:56:36 10 to make the recommendation, because I think he would benefit
11 from the program.

12 THE COURT: All right. Thank you, sir.

13 MR. TILTON: Yes.

14 THE COURT: Mr. VanOchten, is there anything you
03:56:43 15 wish to say on your own behalf, sir? You may proceed as you
16 wish.

17 THE DEFENDANT: Yes, sir. I would just solemnly
18 like to apologize to you and this Court. I'm very sorry. I
19 behaved immaturely. I made some poor -- very poor
03:57:01 20 decisions. I'm truly not a bad man, your Honor, but I have
21 done some things that in the past couple years, with the
22 onset of COVID, and my father passed, I had some issues. I
23 know it's no excuse, but I turned to alcohol, and that's
24 basically what got me into this whole mess. And I'm not --
03:57:20 25 like I say, there is no excuse for it. There is no excuse

1 for the items that I had in my possession either, you know,
2 I'm extremely sorry about that.

3 I just want to let you know that I want to say that
4 I'm sorry to my community, to my ex-wife's family, and to my
03:57:39 5 family specifically for what I've put these people through.
6 They deserve better from me, and I am a better person.

7 When I look back -- I've had some time to think
8 about this, and I look back at myself and what I've done,
9 I'm just so ashamed. I don't even know where to start. I
03:57:54 10 just want to let you know that I am better than that, I
11 truly am. And I just hope that you can understand that I am
12 a trustworthy and an honorable man, I really am.

13 There is -- Them devices, I've told the absolute
14 truth about that, sir, about their purpose and their intent,
03:58:13 15 and that's exactly what they were for.

16 THE COURT: What do I make, Mr. VanOchten, of your
17 conduct while on bond and your violation of the Kalkaska
18 County PPOs?

19 THE DEFENDANT: The one -- The PPO that he was
03:58:33 20 referring to that the prosecution was referring to wasn't
21 actually -- I was out on probation at that time when she had
22 taken that film. The only other time was I was when they
23 had told me that I was a PPO was against me, my wife had
24 moved out for a week, so I was there getting stuff ready to
03:58:51 25 move. I knew that I wasn't supposed to be there. She was

1 actually with her daughter at that time, and they came home
2 -- or she came home and called the police, that -- it's a
3 totally different instance there. It was only one time, and
4 in my probation officer even, you know, had said that, you
03:59:08 5 know, you weren't supposed to be there, you were packing
6 your stuff, you were getting out, I was doing stuff to try
7 to help her, I was cleaning out the garage so she could get
8 her vehicle inside. I was trying to help her is what I was
9 doing. I understand I wasn't supposed to be there, but I
03:59:20 10 wasn't there drinking at that particular time at all. When
11 I was drinking --

12 THE COURT: So you were packing in the garb that
13 you had in that picture?

14 THE DEFENDANT: No, that's what I was saying. That
03:59:29 15 was from before the PPO was issued, that garb. They have
16 got that wrong. That was while I was on probation before.
17 The PPO didn't come out until November 9th.

18 THE COURT: Did you have a probation condition
19 ordering you to stay away?

03:59:45 20 THE DEFENDANT: No, sir, I didn't. I was living
21 there the whole time, going to work. What it was is -- and
22 I had quit drinking for probably two months, and I had
23 basically fell off the wagon is what it was, and it was me
24 feeling sorry for myself. There was no intent to ever hurt
04:00:01 25 anybody. I'm not that kind of a person. It's how I kind of

1 deal with things, I guess. It's not normal and, you know, I
2 understand I do need help.

3 As far as the drinking goes, sir, I am done with
4 that. I'm honestly -- I know everybody says that, but
04:00:17 5 seeing what I put my family through, it destroys me, it
6 really does, and I will not drink ever again. And I just
7 want to let you know that you are never going to see me in
8 here again. I've learned such a lesson on this, a life
9 lesson. It's an understatement what kind of lesson I've
04:00:34 10 learned so far. And I'm just extremely sorry. That's all I
11 can say, sir. I'm so very sorry. It was never my intent to
12 hurt anybody. I did go on a drunken rant one time, you
13 know, and that's where the audio came in. In no way would I
14 ever attempt to hurt anybody, sir. Never in my life have I
04:00:55 15 ever been to any kind of violence at all. I'm not an
16 abusive person, I'm not a violent person. I have kind of an
17 odd hobby, I guess you would say.

18 No, I just don't even know what else to say. I
19 just want to convey to you how very sorry I am and, your
04:01:13 20 Honor, I'm not going to be back. I definitely have learned
21 my lessons here, sir.

22 Thank you. Thank you.

23 THE COURT: Thank you.

24 THE DEFENDANT: Thank you for your time, your
04:01:22 25 Honor.

1 THE COURT: It's the Court's duty to impose a
2 sentence sufficient but not greater than necessary to comply
3 with the purposes of sentencing set forth in 18 U.S. Code
4 3553(a).

04:01:33 5 The Court recognizes the guidelines are advisory to
6 the Court, but I have taken the guideline into account as an
7 initial benchmark or a starting point when sentencing in
8 this case.

9 I recognize I must make an individualized
04:01:43 10 assessment based on the facts presented. The guideline
11 range is one of the array of factors warranting
12 consideration.

13 I also fully recognize my discretion in determining
14 an appropriate sentence, as recognized by the United States
04:01:58 15 Supreme Court in its decisions in Booker, Kimbrough, Rita,
16 Gall, Spears, and the Sixth Circuit case of Herrera-Zuniga.

17 Pursuant to Tapia vs. The United States, at 131
18 Supreme Court 2382, the Court recognizes that imprisonment
19 is not suitable for the purpose of promoting correction and
04:02:18 20 rehabilitation. I have considered all of the defendant's
21 arguments in support of his request for a lower sentence.

22 The 3553 factors are the nature and circumstances
23 of the offense and the history and characteristics of the
24 defendant. The sentence must reflect the seriousness of the
04:02:33 25 offense; promote respect for law; provide just punishment

1 for the offense; afford adequate deterrence to criminal
2 conduct; protect the public from further crimes of the
3 defendant; provide the defendant with needed medical,
4 educational, and/or correctional treatment; the need to
04:02:48 5 avoid unwarranted sentencing disparity among similarly
6 situated defendants; any guideline policy statements that
7 pertain; and the kinds of sentences available to the Court.

8 First, as far as recommendations to the Bureau of
9 Prisons is concerned: The Court recommends the defendant
04:03:05 10 receive substance abuse treatment and counseling while he is
11 incarcerated.

12 I recommend that he be screened for the RDAP
13 program, which is the best substance abuse treatment program
14 within the jurisdiction of the Bureau of Prisons.

04:03:18 15 Mr. VanOchten would benefit from a mental health
16 assessment and any treatment and counseling the mental
17 health professionals of the Bureau of Prisons deem to be
18 appropriate.

19 Third, that he receive vocational/educational
04:03:31 20 opportunities while he is incarcerated.

21 And that he be housed in a facility as close to his
22 home as possible.

23 The Court's had the benefit of the sentencing
24 memoranda and attachments by the government and the
04:03:46 25 defendant. The defendant obviously has support in the

1 community moving forward, which he will undoubtedly lean on
2 while he is serving his sentence.

3 The Court also notes that the defendant is in
4 Criminal History Category I, with one point on his criminal
04:04:05 5 history, which is clearly indicative of a period of --
6 significant period of time during his life that he was a law
7 abiding citizen.

8 Unfortunately, in 2022, the defendant placed
9 himself in a very difficult position by making some very
04:04:31 10 wrong decisions regarding his conduct, not only as far as
11 the offense of conviction here is concerned, but also
12 conduct that he participated in while on bond to this Court,
13 as well as while he was on probation. It's hard for me to
14 understand why a probation officer would blow off the
04:04:56 15 conduct that he was presented with, but in any event, Mr.
16 VanOchten seemed to minimize the probation officer's
17 concerns there. I'll accept that explanation, but I'm
18 surprised, let's put it that way.

19 The first issue for the Court to consider, of
04:05:16 20 course, is acceptance of responsibility, and the government
21 has some very apt arguments to make as it relates to the
22 granting of the two levels for acceptance of responsibility,
23 which obviously would also implicate the third level based
24 on the government's motion that the defendant pled timely.
04:05:38 25 The Court views this as -- the Court views this as a very

1 close issue. I am going to give the defendant the benefit
2 of the doubt and give him acceptance of responsibility, and
3 given the government's motion, a total of three levels for
4 acceptance. Accordingly, the guidelines are as calculated
04:05:59 5 by the Court's probation office as 46 to 57 months.

6 The nature and circumstances of this offense and
7 the defendant's conduct on the date he was arrested is very
8 concerning to the Court. Concerning the nature and
9 circumstances of the offense. The devices that he had were
04:06:20 10 potentially ones that could do great damage if improperly
11 used. There is no allegation by the government that just
12 previous to his arrest that the defendant had been misusing
13 these devices, but the Court is concerned about some of the
14 defendant's statements in close chronological proximity to
04:06:50 15 his possession of these devices regarding -- especially the
16 reference to going to war, and a reference to certain
17 officials. You obviously have a First Amendment Right to
18 express your personal political views, but on the other
19 hand, there is no right to threaten or potentially threaten
04:07:10 20 elected officials.

21 Mr. VanOchten needs to be specifically deterred. I
22 think that's a major factor for the Court to consider. And
23 given Mr. VanOchten's conduct as it relates to the PPO, as
24 well as his conduct while on bond to this Court, another
04:07:31 25 specific concern of the Court is promoting respect for law.

1 Mr. VanOchten was, shall we say, not in compliance with his
2 bond, and I think that reflects the respect he has for the
3 laws of the United States.

4 I also must be mindful of general deterrence of
04:07:55 5 others who might contemplate similar criminal activity. At
6 the time he was he was arrested, Mr. VanOchten represented a
7 threat to the public, in the Court's judgment. Now, that's
8 not to say that if he takes to heart the substance abuse
9 treatment and counseling that he gets, as well as the mental
04:08:15 10 health assessment, which I think he would benefit from, that
11 he can't come out of prison and successfully complete
12 supervised release. But protection of the public from
13 further crimes of the defendant as he sits here today is a
14 concern of the Court as well.

04:08:33 15 The Court recommends -- The Court recognizes, not
16 recommends, but the Court recognizes the recommendation of
17 the Court's probation office here, but in the Court's
18 judgment, that recommendation misses the mark in considering
19 all of the 3553 factors, including the seriousness of the
04:08:55 20 offense; promote respect for law; and provide just
21 punishment for Mr. VanOchten's actions. The Court finds
22 that a sentence in the middle of the advisory guideline
23 range is the appropriate sentence in this case.

24 Accordingly, it's the judgment of the Court the
04:09:12 25 defendant is committed to the custody of the Bureau of

1 Prisons for a term of 52 months.

2 Upon release from imprisonment, the defendant shall
3 be placed on supervised release for a term of three years.

4 Within 72 hours of release from custody of the
04:09:27 5 Bureau of Prisons, the defendant shall report in person to
6 the probation office in the district to which he is
7 released.

8 While on supervised release, the defendant shall
9 comply with the mandatory and standard conditions of
04:09:39 10 supervision, including DNA collection and drug testing.

11 The following special conditions of supervision are
12 ordered:

13 Participate in a program of testing and treatment
14 for substance abuse, as well as mental health treatment as
04:09:53 15 directed by his probation officer. Follow the rules of the
16 program until he is released from the program by his
17 probation officer, and pay at least a portion of the cost
18 according to his ability to pay, as determined by his
19 probation officer.

04:10:06 20 He must not knowingly purchase, possess,
21 distribute, administer, or otherwise use any psychoactive
22 substances or paraphernalia related to controlled
23 substances, including synthetic marijuana and bath salts
24 that impair a person's physical or mental functioning,
04:10:24 25 whether or not intended for human consumption.

1 He must not use or posses any controlled substances
2 without a valid prescription. If he has a valid
3 prescription, he must follow the instructions on the
4 prescription.

04:10:35 5 He must not possess, use, or sell marijuana or any
6 marijuana derivative, including any product containing CBD
7 or THC in any form, including edibles or for any purpose,
8 including medical purposes. He is also prohibited from
9 entering any marijuana dispensary or grow facility.

04:10:56 10 He must submit his person, property, house,
11 residence, vehicle, papers, computers, and other electronic
12 devices to a search conducted by the United States Probation
13 Office. Failure to submit to a search may be grounds for
14 revocation of release. He must warn other occupants of the
04:11:11 15 premises that he lives or works that the premises is subject
16 to search pursuant to this condition. The probation officer
17 may conduct a search under this condition only when
18 reasonable suspicion exists that he has violated a condition
19 of supervision and that the areas to be searched contain
04:11:28 20 evidence of the violation. Any search must be conducted at
21 a reasonable time and in a reasonable manner.

22 The special assessment of \$100 is ordered due and
23 payable immediately.

24 The Court does not intend to impose a fine in this
04:11:43 25 case.

1 Mr. Tilton, any other recommendations to the Bureau
2 of Prisons that you would like?

3 MR. TILTON: No, your Honor. Thank you.

4 THE COURT: Any legal objection to the sentence
04:12:06 5 imposed, other than those objections already on the record?

6 MR. TILTON: No, your Honor, nothing new.

7 THE COURT: Are you satisfied I've addressed all of
8 your arguments on the record?

9 MR. TILTON: Yes, your Honor.

04:12:13 10 THE COURT: Thank you.

11 Mr. Kessler, any legal objection to the sentence
12 imposed?

13 MR. KESSLER: No, your Honor.

14 THE COURT: Is there a forfeiture allegation here?

04:12:20 15 MR. KESSLER: No, there's not, your Honor.

16 THE COURT: All right. Thank you.

17 Mr. VanOchten, I advise you, sir, you can appeal
18 your conviction if you believe that your guilty plea was
19 somehow unlawful or involuntary, or if there is some other
04:12:31 20 fundamental defect in the proceeding not waived by your
21 guilty plea.

22 You also have a statutory right to appeal your
23 sentence under certain circumstances, particularly if you
24 think the sentence is contrary to law.

04:12:43 25 You have the right to apply for leave to appeal in

1 forma pauperis, if you are poor. If you wish to do so, with
2 a few exceptions, you need to file the appropriate documents
3 within 14 days of the entry of the judgment in this case.
4 Your attorney will prepare and file a notice of appeal upon
04:12:59 5 your request.

6 Counsel is advised of his obligation to advise his
7 client of his appellate rights. Should your client wish to
8 pursue an appeal, the forms for filing an appeal can be
9 found on this Court's website or the Court of Appeals'
04:13:12 10 website. Should your client choose to appeal, you're
11 obligated to continue representation of him until such time
12 as you are specifically relieved by the Court of Appeals.

13 Mr. Kessler, you are on your feet.

14 MR. KESSLER: Yes, your Honor. I'm sorry. I
04:13:24 15 realized as soon as the words came out of my mouth, I
16 misspoke about the forfeiture allegation. There is a
17 forfeiture allegation as to the firearm that had a
18 projectile launcher under it, he is going to forfeit that
19 item.

04:13:38 20 THE COURT: All right. The Court will entered the
21 forfeiture as part of the judgment.

22 Anything further from the government?

23 MR. KESSLER: No, your Honor.

24 THE COURT: Mr. Tilton, anything further on behalf
04:13:48 25 of the defendant?

1 MR. TILTON: Maybe just a correction on the
2 forfeiture allegation. The allegation in the Indictment is
3 for the pipe bombs and then there was an additional
4 agreement on the projectile launcher in the plea agreement.

04:14:04

5 MR. KESSLER: He is correct, your Honor, I'm sorry.

6 THE COURT: All right. Thank you.

7 MR. TILTON: Thank you.

8 THE COURT: The defendant is remanded to the
9 custody of the marshal for execution of sentence.

04:14:14

10 COURT CLERK: All rise, please.

11 Court is adjourned.

12 (At 4:14 p.m., proceedings concluded.)
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C E R T I F I C A T E

I, Kathleen S. Thomas, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/

Kathleen S. Thomas, CSR-1300, RPR
U.S. District Court Reporter
410 West Michigan
Kalamazoo, Michigan 49007